No. 43992-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

WALENTYNA PIATEK and EUGENIUSZ ANTONI PIATEK, wife and husband; and STANISLAW PIATEK, an unmarried individual,

Appellants,

v.

RENATA ANNA PIATEK, an unmarried individual,

Appellee.

APPELLEE'S RESPONSE BRIEF

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I. INTRODUCTION

"All property, real and personal, of the judgment debtor that is not exempted by law is liable to execution." RCW 6.17.090. This includes a debtor's cause of action against the judgment creditor. *Johnson v. Dahlquist*, 130 Wn. 29, 225 P. 817 (1924); *Woody's Olympia Lumber, Inc. v. Roney*, 9 Wn.App. 626, 513 P.2d 849 (1973). The court has an inherent power to supervise the execution of judgments to prevent an inequitable result. *Pacific Sec. Companies v. Tanglewood, Inc.*, 57 Wn.App. 817, 790 P.2d 643 (1990).

Stanislaw Piatek has abused the court systems in this state and overseas for the last eight years, harassing his ex-wife Renata Piatek and her boyfriend with frivolous lawsuits.[1] Stan owes Renata over $2 million dollars in unpaid judgments from these various lawsuits. No part of any of any of these judgments has ever been paid voluntarily, nor was Renata able to collect on any of them.[2]

In 2010, Judge Buckner ruled, in a lawsuit that Stan filed against Renata in Pierce County, that his claims were frivolous and that he was not credible. Judge Buckner awarded a judgment against Stan in Renata's

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[1] Stanislaw ("Stan") Piatek and Renata Piatek will be referred to by their first names in this brief to avoid confusion. No disrespect is intended.

[2] Renata has judgments against Stan from cases in Washington State and Federal Courts, as well as two from lawsuits in Australia. Property division litigation from their divorce is still pending in Poland. In 2012 Stan filed another meritless action against Renata in Poland, which was summarily dismissed in February, 2013.

favor for Renata's damages, fees and costs. Stan did not appeal that judgment, nor did he pay it.

In 2012, Renata was finally able to obtain partial satisfaction of her Pierce County judgment by levying on another frivolous lawsuit which Stan filed against her. Washington law allows a judgment creditor to levy upon a cause of action which the debtor has against the creditor. Renata's execution is consistent with her legal rights and is well-supported by Washington law. Judge Buckner's decision to deny Stan's motion to quash the writ of execution was a fair and equitable exercise of the court's power considering the history of the parties and of this case in particular. This Court should affirm.

II. STATEMENT OF THE CASE

A. Background of litigation between these parties.

Stan and Renata Piatek were married and are now divorced. CP 408. Their property division proceedings are underway in the Polish courts.[3] CP 408. Stan is now married to Magdalena Siudy and she is his co-plaintiff in the lawsuit on which Renata executed (the "King County lawsuit.") CP 409. John Glowczyk, Renata's boyfriend, is Renata's co-defendant in the King County lawsuit. CP 409. The King County lawsuit is the latest in a string of cases arising from the divorce, the property

[3] In Poland, the divorce and property division are two separate proceedings. The Court finalizes the divorce, and then in a separate proceeding, divides up the marital property.

division and Stan's ongoing harassment of Renata in courts around the world. CP 409. These cases have resulted in over $2 million worth of judgments against Stan in favor of Renata, of which Stan has never voluntarily paid a penny. CP 128, CP 214.

The following is a summary of some of these lawsuits:

1. Stan sued Mr. Glowczyk in King County Superior Court in 2007 claiming some of the exact same allegations as made in the 2012 King County lawsuit. The action was dismissed on summary judgment and Mr. Glowczyk has a judgment against Stan in the principal amount of $20,362.67. No amount of that judgment has been voluntarily paid. CP 409.

2. Renata and Stan litigated the division of a house and real property located in Maple Valley, Washington. During trial, Judge Christopher Washington of the King County Superior Court ruled he had the authority to determine the ownership of real property located in Washington between parties undergoing a divorce in another country. The parties then settled which resulted in the sale of the property by a custodial receiver who divided the net profits from the sale between Stan and

Renata. CP 409.

3. Stan purchased property in Buckley, Washington with money from the sale of a family home he and Renata owned in Australia, but put title in Ms. Siudy's name. Renata sued to enforce her ownership rights. When Renata sued Ms. Siudy, Ms. Siudy transferred the property to Stan's mother. The U.S District Court (Judge Leighton) found the property was owned by Renata. Ms. Siudy appealed to the Ninth Circuit Court of Appeals and Renata also prevailed on the appeal. Renata has an unpaid judgment against Ms. Siudy of $1,980.02 for the cost bill associated with that case. CP 409-410.

4. Stan and his parents sued Renata in Pierce County Superior Court claiming that Ms. Siudy had transferred the Buckley house to Walentyna Piatek and, therefore, Judge Leighton's decision did not apply to ownership. Judge Buckner tried the case and entered judgment dismissing the claims and finding damages in favor of Renata in the principal amount of $153,495.71. Judge Buckner ruled that the case was frivolous. That judgment is the one which was partially satisfied as a result

of the sheriff's sale of Stan's recent King County lawsuit. CP 410.

5. Renata has two unpaid judgments from cases in Australia in the principal amounts of $839,099.83(AU) and $984,955.29(AU). Those judgments are also wholly unpaid. CP 410.

6. Fees and costs were awarded to Renata and Mr. Glowczyk in a third case in Australia, but the amount of fees and costs had not been determined by the Australian court as of August, 2012. CP 410.

7. Stan sued Renata and Mr. Glowczyk in King County Superior Court in 2011, alleging RICO and WRICO violations. Renata and Mr. Glowczyk removed the case to Federal Court and then Stan dismissed it.

8. Stan sued Renata and Mr. Glowczyk in King County Superior Court again in 2012, alleging just WRICO violations. This is the lawsuit on which Renata levied.

In addition, there have been multiple actions in courts in Poland relating to various pieces of real property and corporations that Stan and Renata own in Poland, and to the divorce and the property division. CP 410.

B. Renata's Pierce County judgment.

The Pierce County Superior Court awarded Renata judgment against Stan on November 19, 2010, in this lawsuit (discussed under item 4, above.) CP 391. Judge Rosanne Buckner found that the action was frivolous and that Stan was not credible. CP 137. That judgment was worth $183,670.79 as of July 1, 2012. Stan did not appeal that decision but made no voluntary payments on that judgment whatsoever, nor was Renata able to collect any of it until her execution on the King County cause of action. CP 391.

C. The King County action.

In December 2011, Stan and Ms. Siudy filed another lawsuit against Renata and Mr. Glowczyk, this time in King County Superior Court. CP 129. Stan alleged baseless federal RICO and Washington State Criminal Profiteering Act ("WRICO") violations. CP 129. Renata and Mr. Glowczyk removed the case to federal court. CP 129. When it appeared that the case would be assigned to Judge Leighton who had previously found, as the Pierce County Court had, that Stan was not credible, Stan and Ms. Siudy voluntarily dismissed. CP 129.

On February 2, 2012, Stan and Ms. Siudy filed yet another action against Renata and Mr. Glowczyk, re-filing the WRICO claim in King County Superior Court, this time without any federal claims. CP 129.

Renata and Mr. Glowczyk moved to dismiss on the basis of failure to state a claim under CR 12(b)(6). CP 129. Stan and Ms. Siudy amended their complaint the night before oral argument, modifying their factual allegations but not changing the cause of action. CP 129. CP 230-253. Stan implies that Renata and Mr. Glowczyk's 12(b)(6) Motion was denied on the merits. In fact, Judge Prochnau asked for additional briefing on the issue of whether the amendment rendered the 12(b)(6) motion moot. Stan's position was that the motion was moot. Ultimately, Judge Prochnau decided that the amended complaint rendered the Motion to Dismiss moot. CP 129, CP 184.

Renata and Mr. Glowczyk then answered the Amended Complaint, filed counterclaims for a frivolous claim and CR 11 violations, and promptly scheduled a CR 12(c) Motion for Judgment on the Pleadings. CP 129-130. Renata tried to get the motion heard as soon as possible, but due to the claimed schedules of Stan's lawyers it could not be scheduled until late September, 2012.[4]

Stan's machinations in the King County case, including dismissing the original action, filing the second action, amending his Complaint on the eve of Renata's CR 12(b)(6) motion, serving improper and excessive discovery, opposing a stay of discovery while Renata's CR 12(c) motion

[4] Stan's counsel professed to be unavailable for hearing for Renata's CR 12(c) motion on August 24, 2012, but then noted his own Motion to Quash for that date. CP 351-352.

was pending (which stay was granted by the court) filing a CR 41 motion then withdrawing it at the last minute (after Renata responded), all drove up Renata's legal fees in that case. As of August, 2012, Renata had spent over $90,000 in the King County action as a result of Stan's tactics.[5] CP 214. Stan continued to do all he could to draw the process out and make it more expensive. Rather than spend even more money on multiple motions and discovery, Renata elected to execute on the cause of action.

D. Renata's execution on the King County cause of action.

In July 2012 Renata obtained a Writ of Execution from Pierce County court to allow her to execute on the King County cause of action as permitted by Washington law. CP 375-377. Stan filed a Motion to Quash Renata's Writ of Execution, which the court denied. CP 351-352. On August 29, 2012, the King County sheriff executed on the King County cause of action and held a sale of it. CP 369. Stan and his attorney were present and bid on the cause of action but only up to $30,500.00. CP 393. Renata was the successful bidder with a bid of $35,000.00. CP 393. Renata then filed a Partial Satisfaction of Judgment in Pierce County court in the amount of $35,000.00. CP 353-354.

[5] Stan employed similar costly tactics in the Pierce County lawsuit, where, after losing his Motion to Quash, he filed a Motion for Reconsideration which he withdrew at the last minute, after Renata had incurred the legal fees in drafting and filing her response.

E. Current status of the King County cause of action.

After purchasing Stan's claim in the King County action at the sheriff's sale, Renata moved to dismiss it with prejudice. That motion was granted by Judge Prochnau on September 11, 2012. CP 433-434. The only claims remaining were Ms. Siudy's claim and Renata and Mr. Glowczyk's counterclaim for filing a frivolous action and for CR 11 sanctions. Judge Prochnau granted Renata's and Mr. Glowczyk's CR 12(c) motion for judgment on the pleadings, and dismissed all of plaintiffs' claims on October 3, 2012. CP 461-462. At this time the only remaining claims in the King County lawsuit are defendants' counterclaims for CR 11 sanctions and for filing a frivolous action. Trial is set for October 14, 2013.

III. ARGUMENT

A. The trial court's denial of the motion to quash is reviewed for an abuse of discretion.

A denial of a motion to quash a writ of execution is an exercise of the court's equitable powers. *Fluor Enters., Inc. v. Walter Constr., Ltd.*, 141 Wn. App. 761, 771, 172 P.3d 368 (2007). The denial of such a motion is reviewed for an abuse of discretion. *Commanda v. Cary*, 143 Wn.2d 651, 23 P.3d 1086 (2001); *Cusano v. Klein,* 485 Fed. Appx. 175, 179, 2012 U.S. App. LEXIS 12084, 2012 WL 2153947 (9th Cir. Cal. 2012) citing *United States v. Chen*, 99 F.3d 1495, 1499 (9th Cir. 1996).

Stan's Motion to Quash required the lower court to exercise its equitable powers; this issue is an equitable one and the standard of review is abuse of discretion. Stan's contention that the standard of review is de novo is erroneous.[6]

B. The Court did not abuse its discretion in denying Appellant's Motion to Quash the Writ of Execution.

A trial court abuses its discretion when its decision or order is manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons. *Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 860, 281 P.3d 289 (2012); *Noble v. Safe Harbor Family Pres. Trust*, 167 Wn.2d 11, 17, 216 P.3d 1007 (2009). Here, the lower court's decision is sound, tenable and reasonable, and was a fair and equitable exercise of the court's inherent power to supervise the execution of judgments. Not only is Renata's execution on Stan's cause of action permitted by established and long-standing Washington Supreme Court precedent, but allowing the execution was the fair and equitable result. Stan owes over $2 million to Renata. He has bullied her with frivolous cases around the world. Renata took legal steps to satisfy an unpaid judgment from Stan's only asset in Washington and it was not an abuse of discretion to allow her to do so. Indeed, to deny Renata her right to

[6] The lower court's decision should be upheld even if was to be reviewed de novo, because Washington law provides that a judgment creditor may execute on the debtor's cause of action, exactly as Renata did here.

execute, thereby permitting Stan to ignore his many unpaid judgments and continue to bully Renata with impunity, would have constituted an injustice and would have been an inequitable result.

C. Stan's arguments fail to show that the Court improperly denied his motion.

1. Stan's due process argument is meritless.

Stan argues that due process concerns should preclude Renata from executing on a judgment that she obtained after a full trial. Although not one penny of the judgment has been voluntarily paid, Stan asserts that allowing Renata to execute on that judgment against his claim against her in King County would be a violation of due process. There is no Washington law supporting that claim. Even the *Wegman* case, which Stan cites, points out that "M. P. Medical has no constitutional right to appeal in this case..." *M.P. Med., Inc. v. Wegman,* 151 Wn.App. 409, 417, 213 P.3d 931 (2009).

Stan's argument that Renata nullified a $6.5 million lawsuit to satisfy a $180,000.00 judgment fails too. Stan argues that inequity can result if the creditor is the only bidder and thus has no incentive to bid more than a token amount. (Appellant's Brief, p. 9-10.) This argument is beside the point, since Stan was present at the sheriff's sale, with his lawyer, and he engaged in bidding. He stopped bidding at $30,500.00, but he could have bid up to $183,670.79, thereby satisfying the judgment in

full and preserving his purportedly multi-million dollar claim, if he really believed that the lawsuit had that value.[7] In fact, if he had paid the judgment amount of $183,670.79 *at any time up to the time of the sale* he would have satisfied Renata's judgment in full and still owned the lawsuit which he claims is worth millions. The power to retain the King County lawsuit lay within his hands. Due process concerns simply do not come into play in these circumstances, nor can Stan seriously argue this situation is somehow unfair to him.

In sum, there is no due process right that should preclude a judgment creditor from obtaining satisfaction of a two year old judgment, which was not appealed and which the debtor refuses to pay. For over seven years, Stan has controlled millions of dollars of family funds and property. Instead of paying what he owes Renata, he is using those very funds to harass her in courts around the world. His due process rights are not at issue where, as here, his unpaid creditor acted in accordance with our statutes and our Supreme Court precedent to obtain partial satisfaction of an unpaid judgment. Stan's remedy, if he wished to avoid the levy, was simple: pay the judgment.

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[7] Stan offers no support for his assertion that the King County lawsuit is worth millions; in fact, the remaining claims were dismissed shortly thereafter and Renata's CR 12(c) Motion for Judgment on the Pleadings in that case (CP 189-212) sets forth the applicable law and demonstrates that the claims in that lawsuit were meritless.

2. Stan's claim of other personal property is meritless.

Stan asserts that Renata admitted that he has other property in King County, and that she should execute on that property instead of the King County action. (Appellant's brief, p. 6) His argument misleadingly quotes part of a sentence in Renata's Motion for a Writ of Execution. Stan quoted Renata as having written: "[a]mong the personal property owned by plaintiff Stanislaw W. Piatek is intangible property located in King County Washington..." and he argued that this meant that Renata knew of other property in King County on which she should have executed first. The entire sentence stated: "[a]mong the personal property owned by plaintiff Stanislaw W. Piatek is intangible property located in King County Washington, which property consists of a cause of action filed in King County Superior Court." Stan quoted the first phrase of this sentence, but omitted the second (underlined) phrase in an attempt to make it seem as though Renata was aware of other property, beside the lawsuit, located in King County. On the basis of this misquotation, Stan argued that Renata should have executed on his other property in King County. This argument misses the mark for two reasons.

First, this sentence meant what it said – that among all of Stan's personal property wherever located is included an item of intangible property in King County – the lawsuit. This reference was to the lawsuit

on which Renata executed, not to other personal property. Renata is not aware of other personal property in King County. CP 217. Second, even if Stan had other property here, there is no requirement that Renata must execute on it first.

3. The claim that Stan supposedly offered Renata property in Poland does not defeat Renata's right to proceed with the levy.

Stan argues that he tendered valuable property in satisfaction of the judgment, and so the Court should have quashed Renata's writ. This argument has no merit. The law is clear that a creditor may execute on any of the debtor's personal property (with limited exceptions not applicable here), including a cause of action. A creditor need not stop the execution proceedings if the debtor states he wants to use other property to satisfy the judgment. Stan had the option, since the judgment was entered *almost two years before the sale,* of paying it. At any time since November 2010, including in the days and even hours before the execution sale, he could have satisfied this judgment. He chose not to and should not now be permitted to defeat Renata's right to obtain satisfaction of the judgment by arguing that there is other property which he claims he intended to make available.

Moreover, Stan did not submit anything proving the alleged value of the Polish property and in fact, that property is subject to numerous

encumbrances and has no appreciable value. However, even if the property had value as Stan claims, this would not defeat Renata's right to execute on the King County cause of action. Stan should have paid the judgment amount if he wanted to avoid the sale.

4. Renata's execution on the King County lawsuit is a legal, permissible and equitable way to collect a debt.

Stan argues that Renata should not be allowed to execute on the King County cause of action because "writs of execution are intended as a means to collect a debt, not as a tactic for escaping litigation." (Appellant's brief, p. 11.) This argument misses the point. Renata would have been perfectly happy to be paid the amount that she is owed. Nothing stood in the way of Stan paying her the approximately $183,000 that he owes her prior to the sheriff's sale, in which case the sheriff's sale would not have proceeded. He also could have bid up to the value of the judgment at the sheriff's sale. He chose not to do so.

Stan's argument that Renata is erroneously using judicial procedure to gain an unfair advantage over him, or that he is being denied his day in Court, is exceedingly far-fetched, given that Stan has filed cases all over the world, costing Renata hundreds of thousands of dollars, and has been found to lack credibility in Washington's state courts, in federal court in Tacoma, Washington and in Australia. He has had his day in

court over and over again. Renata followed Washington law in obtaining partial satisfaction of her judgment by executing on Stan's latest lawsuit against her and the Court was correct in permitting her to do so.

D. This Court should not consider Stan's argument that Washington law does not permit a judgment creditor to levy upon a cause of action against himself.

Stan conceded at oral argument that the law permits a party to purchase a claim against herself at an execution sale: "Regarding the *Dahlquist* case, we don't dispute that a party is able to purchase claims. That's not our argument." RP 8; lines 13-14. Stan argued that even though this type of execution is permitted under Washington law, it would be inequitable to allow it in this case. He argued that "the Court's inherent supervisory powers over its own proceedings and inherent equitable powers" should be used to prevent "inequitable results for Mr. Piatek." RP 2; lines 13-17. Stan acknowledged that the execution ". . .is plausible. It can happen. We are mostly concerned about the results." RP 8; lines 19-20. He argued: "[T]he take-away for the Court should be that it has the power to prevent abuse and unfair results, such as those that will result to Mr. Piatek should this particular writ issue." RP 2; lines 20-21. After hearing and considering the argument, the trial judge concluded that the equities did not support quashing the writ of execution. RP 9; lines 22-23.

In oral argument below Stan acknowledged that our laws permit a

party to purchase claims as Renata did here, and he relied solely on his equitable argument in his effort to defeat her writ. He should not be permitted to now resurrect his argument that Washington law prohibits a creditor from executing on an action against herself when he expressly and unambiguously abandoned that argument below.

E. Washington law permits a judgment creditor to execute on a cause of action against herself, as Renata did here.

If the Court does consider Stan's argument about whether Renata's levy on the King County cause of action is permissible, this Court should affirm because Washington law permits a creditor to execute on a cause of action against herself as Renata did here. In *Johnson v. Dahlquist*, 130 Wn. 29, 225 P. 817 (1924), our Supreme Court held that a debtor's claim against his creditor is subject to execution by that creditor. The Court rejected the argument that a creditor should not be allowed to levy on a claim against himself:

> But it is contended that the respondents should not be permitted to levy upon that which they themselves owe to the judgment debtor. But why not? It is property. It is capable of being transferred. It is capable of being converted into a judgment which is subject to execution. It is an asset of the judgment debtor, and why should not his assets, whatever their nature, be taken to satisfy a judgment? We cannot see any logical reason why such property should not be levied on."

Johnson, 130 Wn. at 33. Fifty years later, the court in *Woody's Olympia Lumber, Inc. v. Roney*, 9 Wn. App. 626, 513 P.2d 849 (1973), followed

Johnson. The court in *Woody's Olympia Lumber* cited *Johnson* with approval and vacated an order which had quashed the Writ of Execution on a cause of action, allowing the execution to proceed. *Woody's Olympia Lumber*, 9 Wn. App. at 630. Both *Johnson v. Dahlquist* and *Woody's Olympia Lumber* permit execution on judgment debtors' causes of action.

Stan cites two Court of Appeals decisions which he claims support his position that Renata should not be allowed to execute on Stan's cause of action to in partial satisfaction of her long-unpaid judgment, but neither of these cases provides support. In *M. P. Medical, Inc., v. Wegman*, 151 Wn. App. 409, 213 P.3d 931 (2009), the defendant successfully defended an action before the trial court and when the plaintiff appealed, the defendant attempted to execute on the pending appeal. *Wegman*, 151 Wn. App. at 414. The *Wegman* court stated that courts should protect the appellate process and the trial court should have exercised its inherent power to not allow execution on an appeal in the same case. *Wegman*, 151 Wn. App. at 417. The *Wegman* decision only holds that where there is an appeal pending, the prevailing party at the trial court level cannot execute on that appeal. That situation is different from the one here. The rights involved in an appeal and the enforcement of the very judgment under review are not at issue here, where the asset subject to execution is a separate cause of action.

Paglia v. Breskovich, 11 Wn.App. 142, 522 P.2d 511 (1974), does not help Stan either. The result in *Paglia* was remand to the trial court with instructions that the court should exercise its supervisory powers to achieve a just result: "Both orders appealed from are reversed and the trial court is authorized and advised to exercise such inherent supervisory powers over its own process as is deemed necessary to satisfy the reasonable demands of justice to all parties hereto." *Paglia*, 11 Wn.App. at 148. *Paglia* does not stand for the proposition that a creditor cannot execute on a claim against himself. Rather, the holding in *Paglia* is that the Court should exercise its powers to satisfy the reasonable demands of justice. *Paglia*, 11 Wn. App. at 144. In this way, *Paglia* supports Renata's position, as justice in this case is best served by allowing the execution, as found by Judge Buckner who ruled that the equities did not justify quashing the writ.

The *Paglia* court believed that *United Pacific Insurance Company v. Lundstrom*, 77 Wn.2d 162, 459 P.2d 930 (1969) may have been "signaling a departure from and presaging the eventual overruling of *Johnson*." *Paglia*, 11 Wn. App at 146. Actually, the *Lundstrom* court had merely held that the *Johnson* rule was not applicable there. *Lundstrom*, 77 Wn. 2d at 172. The Court in *Lundstrom* denied execution because of the uncertainty of the underlying claim, which would remain

contingent and uncertain even after being reduced to judgment. The *Lundstrom* court distinguished *Johnson v. Dahlquist* and tacitly acknowledged it as good law. *Lundstrom*, 77 Wn. 2d at 172. *Wegman* pointed out in 2009 that the *Johnson* rule remains the law in Washington:

> "We are bound by the decisions of our state Supreme Court and err when we fail to follow them. Since our Supreme Court does not generally overrule binding precedent sub silentio, we do not agree with *Paglia's* suggestion that the *Johnson* rule has been discarded."

Wegman, 151 Wn.App. at 417. (emphasis added.) No case has overruled the binding precedent of the *Johnson* decision, which holds that a judgment creditor may execute on any property of the judgment debtor, including the judgment debtor's claim against the same creditor.

The two cases Stan cites from other jurisdictions offer no better support. In *Donan v. Dolce Vita Sa, Inc.*, 992 So.2d 859, 861 (Fla. Dist. Ct. App. 2008), the facts were similar to *Wegman*, in that the executing party sought to execute on a claim arising from the same cause of action as the judgment. *Donan*, 992 So.2d at 860. The appellate court held that the lower court had not abused its discretion in denying execution under those facts but acknowledged that a cause of action can be subject to execution. *Donan*, 992 So.2d at 860, 861. The facts and equities in *Donan* were materially different and also, the court did not rule that a creditor cannot execute on a claim against itself, but rather ruled that whether to deny

execution was within the discretion of the trial court. *Donan*, 992 So.2d at 861. *Donan* supports the trial court's exercise of its discretion, which, in this case, the trial court exercised in Renata's favor.

In *Criswell v. Ginsberg & Foreman*, 843 S.W. 2d 304 (Tex. Ct. App. 1992), the other case from outside Washington cited by Stan, the Court held that the debtor's cause of action against the creditor is not amenable to execution by the creditor under Texas law. This, as discussed above, is not the law in Washington, and so this case is not instructive.

The rule in Washington, as articulated in *Johnson* and affirmed in *Woody's Olympia Lumber* and *Wegman,* is that a creditor may execute upon an action against herself. This remains the law today. The court's exercise of its discretion in allowing Renata to execute on Stan's cause of action against her was consistent with Washington law.

F. Renata is entitled to her attorneys' fees on appeal.

An appellate court can award attorney fees for the filing of frivolous appeals. An appeal is frivolous when the appeal presents no debatable issues on which reasonable minds could differ and is so lacking in merit that there is no possibility of reversal. *Stiles v. Kearney,* 168 Wn. App. 250, 267, 277 P.3d 9, (2012) citing *Mahoney v. Shinpoch*, 107 Wn.2d 679, 691, 732 P.2d 510 (1987).

Stan's claims are frivolous. Washington law is unambiguous that a

party may execute on a claim against itself. Stan has no legitimate argument to the contrary. He did not even *mention* the three seminal Washington cases on this issue (*Johnson v. Dahlquist*, 130 Wn. 29, 225 P. 817 (1924), *United Pacific Insurance Company v. Lundstrom*, 77 Wn.2d 162, 459 P.2d 930 (1969) and *Woody's Olympia Lumber, Inc. v. Roney*, 9 Wn.App. 626, 513 P.2d 849 (1973)) in his brief, instead discussing two out-of-state cases that, as discussed above, do not indicate a contrary result in any event.

An attorney must disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to his client's position. RPC 3.3. Where counsel fails to cite controlling case law that renders its position frivolous, he or she "should not be able to proceed with impunity in real or feigned ignorance of them" and sanctions are proper. *United States v. Stringfellow*, 911 F.2d 225, 226 (9th Cir. 1990). Here, Stan is well aware of the controlling law, as these cases were discussed in the briefing below, and Stan's counsel even referred to the *Dahlquist* case in oral argument below. RP 8; lines 13-14. Stan's statements in his appeal brief that the lower court's decision was "in contravention of applicable case law" (Appellant's Brief p. 1) and was a "marked departure from Washington precedent" (Appellant's Brief, p. 6) are false and misleading. Stan's failure to cite the cases which control this

issue and which directly contradict his position supports a finding that this appeal is frivolous.

Stan's equitable argument is as insupportable as the legal one. In order to prevail he would have to show that the trial court abused its discretion in denying the motion to quash. Under an abuse of discretion standard, this court is required to affirm a trial court's well-reasoned decision. *Stiles,* 168 Wn. App. at 268. Here, the trial court considered the equities and, given the facts and history of this case, made a well-reasoned and well-supported decision. Renata has spent over $100,000 in the last year alone in defending herself against Stan's meritless claims, as well as hundreds of thousands of dollars since 2005. Stan owes her over $2 million in judgments, of which he has not paid a penny voluntarily. Renata's use of judicial process to satisfy a portion of one of these judgments was legal and equitable and the lower court correctly allowed it. This court should not condone Stan's continuing use of his fortune to harass Renata and Mr. Glowczyk. Pursuant to RAP 18.1 and 18.9, Renata requests that the Court award her attorneys' fees incurred in defending against the frivolous appeal.

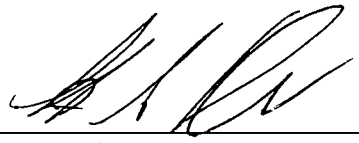
IV. CONCLUSION

Renata Piatek's execution on Stan Piatek's cause of action against her was consistent with Washington law. The denial of the motion to

quash was the correct and equitable exercise of the Court's inherent supervisory power over the execution of judgments, and Judge Buckner did not abuse her discretion when she denied Stan Piatek's Motion to Quash the Writ of Execution. Even if the Court's decision were reviewed de novo, the result should be affirmed as it is the legally correct one. This Court should affirm the trial court's denial of Stan Piatek's Motion to Quash.

DATED this 15th day of April, 2013.

RYAN, SWANSON & CLEVELAND, PLLC

By 

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DECLARATION OF SERVICE

I declare that on the 15th day of April, 2013, I caused to be served the foregoing document on counsel for Appellants, via messenger, at the following addresses:

Mr. Daniel P. Harris
Mr. Charles P. Moure
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Seattle, WA 98101

Susan Smith

Dated: April 15, 2013

Place: Seattle, WA